

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 10 2005

Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.202(b)
FM Table of Allotments,
FM Broadcast Stations

(Magnolia, Arkansas and Oil City,
Louisiana)

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)
)
)

DOCKET FILE COPY ORIGINAL

MB Docket No. 02-199
RM-10514

To: The Commission

**REPLY
TO
OPPOSITION**

I. INTRODUCTION

Access.1 Louisiana Holding Company, LLC ("Access.1"), licensee of commercial broadcast radio stations operating in the Shreveport Urbanized Area, pursuant to Section 1.45, of the Commission's Rules, 47 CFR Section 1.45, hereby submits this Reply to the Opposition to Motion for Leave to File Supplement filed, February 28, 2005, by Cumulus Licensing LLC, in the above-captioned proceeding.

Access.1 submits this Reply to bring to the Commission's attention information supplied to the Bureau by Access.1 on February 25, 2005. The information completely refutes the claim of Cumulus Licensing LLC ("Cumulus"), that it was an unforeseeable set of events that caused it to have to cease operations at its current site for KVMA-FM. The evidence, consisting of a letter from the Federal Aviation Administration ("FAA"), clearly shows that Cumulus failed to follow the instructions of the FAA, given in an FAA 1996 letter, to have any new frequency tested for possible

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interference to aircraft, before any more frequencies were used at that tower.

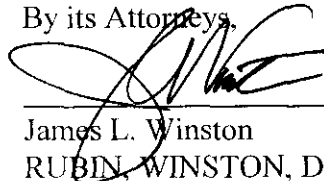
II. CONCLUSION

Access.1 requests, that the Commission consider the evidence reflected in Access.1 's Supplement, along with the attached February 25, 2005 submission to the Bureau, along with the pleadings and information previously provided to the Commission in Access.1's Application for Review. Access.1 requests that the Commission reverse the Bureau's decision, delete the allotment at Oil City, and return the Channel 300C1 allotment to Magnolia, Arkansas.

Respectfully Submitted,

ACCESS.1 LOUISIANA HOLDING COMPANY, LLC

By its Attorneys,



James L. Winston
RUBIN, WINSTON, DIERCKS,
HARRIS & COOKE, L.L.P.
1155 Connecticut Avenue, N.W.
Sixth Floor
Washington, D.C. 20036
(202) 861-0870

March 10, 2005

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

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February 25, 2005

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FEB 25 2005

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Federal Communications Commission
Office of Secretary

Re: Supplement to Informal Objection concerning Cumulus Licensing LLC,
KVMA-FM, Oil City, Louisiana, Facility ID:12414 – Request for
Temporary Authority

Dear Ms. Dortch:

Access.1 Louisiana Holding Company, LLC ("Access.1"), hereby submits a Supplement to its Informal Objection filed February 8, 2005, to the above-referenced Request for Temporary Authority filed by Cumulus Licensing LLC ("Cumulus"), for station KVMA-FM, Oil City ("STA Request"). Access.1 submits this Supplement to demonstrate that the inability of Cumulus to provide service to the people of Oil City is due to Cumulus's failure to notify the Federal Aviation Administration ("FAA") of its intention to operate at its proposed antenna site. Had Cumulus advised the FAA of its intent, Cumulus would have been advised prior to construction at the site that the operation on 107.9 MHz at that site would be a hazard to air navigation. Therefore, Cumulus should not be granted the extraordinary relief being requested here, because the problem is completely of its own making.

As summarized in its Informal Objection, Access.1 has demonstrated throughout the rulemaking process that Cumulus has attempted to obtain a *de facto* reallocation of Channel 300C1 from Magnolia, Arkansas to the Shreveport Urbanized Area. Access.1 demonstrated that the instant STA Request provides additional evidence of Cumulus's lack of intent to provide service to Oil City, and its intention to only provide service to the Shreveport Urbanized Area. Specifically, the STA Request states that the proposed operation will result in "deficient" service to Oil City.

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

Marlene H. Dortch, Esq.

February 25, 2005

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Cumulus filed on February 15, 2005, a "Supplement to Request for Special Temporary Authority, Progress Report, and Response to Informal Objection" ("Cumulus Supplement") purporting to justify the requested STA. However, the Cumulus Supplement is woefully inadequate as a justification for the extraordinary relief being requested. In its Informal Objection, Access.1 pointed out that the STA Request failed to address the following questions:

1. What is the nature and extent of the "deficient service" to Oil City?
2. What is the signal strength of the deficient service to Oil City and what portions of Oil City are affected?
3. Are there any antenna sites available on a short term basis that will allow greater service to Oil City, even if it means less coverage of Shreveport?
4. How long will Oil City experience this deficient service?
5. Is there any reasonable expectation that this deficient service to Oil City ever will be rectified?

The Cumulus Supplement still fails to address these questions. In addition, neither the Cumulus Supplement nor the STA Request addresses a fundamental issue identified by the FAA—this entire situation was completely foreseeable, and Cumulus was negligent in failing to address the interference issue at a much earlier point in time.

Attached hereto as Exhibit 1 is a Determination of Hazard to Air Navigation letter issued January 10, 2005, from the FAA.¹ The letter, at page 4, concludes that the interference caused by KVMA-FM on frequency 107.9 MHz at 24.5 kW ERP "has a substantial adverse effect and constitutes a hazard to air navigation." However, importantly, the 2005 FAA Letter goes on to point out that Cumulus was on notice of the potential problem as the result of an FAA determination in 1996.² The 2005 FAA Letter refers to the 1996 FAA Letter in which the FAA determined that the proposed operation on frequency 102.9 at 44 kW did not pose a hazard to air navigation. The 2005 FAA Letter went on to state:

¹Federal Aviation Administration, Southwest Field Office, Aeronautical Study No. 2005-ASW-6-OE, issued January 10, 2005 ("2005 FAA Letter").

²Aeronautical Study No. 1996-ASW-2512-OE ("1996 FAA Letter").

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

Marlene H. Dortch, Esq.
February 25, 2005
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The [1996 FAA Letter] issued on the existing antenna tower... applied only to the antenna tower and the use of frequency 102.9 at 44kW. [The 1996 FAA Letter] stated that use of other frequencies and power at the antenna tower would require separate notice to the FAA. No notice was filed with the FAA and research resulting from the occurrence of electromagnetic interference found the source to be the use of frequency 107.9 at 24.5 kW on the subject antenna tower.

2005 FAA Letter at page 3.

The above quote from the 2005 FAA Letter demonstrates that Cumulus was on notice prior to beginning construction that a filing with the FAA was required, because of the potential for interference to air navigation from the use of any frequency other than 102.9 MHz at the antenna site.

However, Cumulus ignored the information in the 1996 FAA Letter, and did not file a notice with the FAA. Now, Cumulus seeks special temporary authority to rectify its own neglect—and it proposes to rectify its own neglect by depriving the people of Oil City of service.

Instead of proposing an STA operation that provides service to its community of license, Oil City, Cumulus proposes an STA operation that denies service to Oil City, but that provides service to Shreveport. Given that: (1) Cumulus has moved the 107.9 MHz frequency from the rural community of Magnolia, Arkansas, which was left with no local FM service, (2) Cumulus has attempted to establish an antenna site that provides service to 100% of the Shreveport Urbanized Area, (3) Cumulus's failure to notify the FAA before beginning construction, as directed by the FAA in the 1996 FAA letter, is the cause of its current difficulty, and (4) Cumulus now proposes to provide "deficient" service to Oil City, the Bureau should deny the STA Request.

Cumulus has demonstrated throughout this process that it is not acting in a manner that is designed to provide service to Oil City, and now it seeks Bureau approval to abdicate its obligation to provide service to Oil City. Such a result is not warranted here. The provision of service to the people of Oil City was used by Cumulus to justify the reallocation of the Magnolia frequency. Cumulus is now unable to provide service to the people of Oil City due to Cumulus's own failure to notify the FAA of its intention to use frequency 107.9 MHz at the proposed site. Cumulus should not be rewarded for this neglect. Therefore, the STA should be denied, the reallocation rescinded, the allotment to Oil City deleted, and the frequency should be returned to Magnolia, Arkansas. Indeed, if the objective of Cumulus is to serve Oil City, Cumulus should consider participation in the Commission's current rulemaking proceeding proposing the allotment of Channel 285A as a new

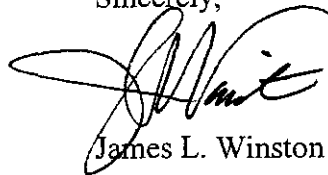
RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

Marlene Dortch, Esq.
February 25, 2005
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frequency for Oil City.³ Perhaps on that frequency, Cumulus may be able to find a site from which it can actually serve the people of Oil City.

Please contact undersigned counsel for Access. I should you require any additional information regarding this Supplement to Informal Objection.

Sincerely,

A handwritten signature in black ink, appearing to read 'JLW', with a stylized flourish extending from the end of the signature.

James L. Winston

JLW/kn

cc: James Bradshaw, Deputy Chief, Audio Division, Media Bureau
George Dillon, Enforcement Bureau
Mark N. Lipp, Counsel for Cumulus Licensing LLC

³*Amendment of Section 73.202(b), FM Table of Allotments, Lovelady, Texas and Oil City, Louisiana, MB Docket Nos. 05-36 and 05-37, DA 05-291, released February 4, 2005.*

Exhibit 1
Access.1 - Supplement to Informal Objection



Federal Aviation Administration
Southwest Regional Office
2601 Meacham Blvd. -ASW-520
Fort Worth, TX 76137-0520

Aeronautical Study No
2005-ASW-6-OE
Prior Study No.
1996-ASW-2512-OE

Issued Date: 1/10/2005

PJ BALANGA ASR SPECTRUM MGMT
DOT/FAA
800 INDEPENDENCE AVENUE SW
WASHINGTON, DC 20591

**** DETERMINATION OF HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna - Side Mount
Location: SHREVEPORT, LA
Latitude: 32-29-36.54 NAD 83
Longitude: 93-45-55.64
Heights: 499 feet above ground level (AGL)
739 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure as described above would have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft and/or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would be a hazard to air navigation.

This determination is subject to review if an interested party files a petition on or before 2/9/2005. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted in triplicate to the Manager, ATO-R Branch, Federal Aviation Administration, Washington, D.C. 20591.

This determination becomes final on 2/19/2005 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have a substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at 317.222-5538
On any future correspondence concerning this matter, please refer to Aeronautical
Study Number 2005-ASW-6-OE.

Signature Control No: 406953-337626

(DOH)

Prentiss M Andrews
Specialist

Attachment(s)
Additional Information
Frequency Data

Additional Information for ASN 2005-ASW-6-OE

The existing side-mount antenna is located approximately 2.98 nautical miles (NM) southwest of Downtown Airport, Shreveport, Louisiana. It exceeds the obstruction standards of Title 14, Code of Federal Regulations, Part 77 as follows:

Section 77.23(a)(2) by a maximum of 296 feet - a height that is greater than 200 feet above ground level within three NM as applied to Downtown Airport. The structure exceeds the same standard by 166 feet with regard to Shreveport Regional Airport and 76 feet with regard to Barksdale Air Force Base.

Section 77.28(a)(3) by 73 feet - a height exceeding the Barksdale Air Force Base Runway 15 inner horizontal surface.

This aeronautical study on the existing antenna transmitting on frequency 107.9 at 24.5 kW ERP, was initiated by the Federal Aviation Administration (FAA) under the authority of 49 U.S.C. Section 40103, 14 U.S.C. Section 44718, and 14 CFR part 77. It was initiated as a result of occurrences of electromagnetic interference with components of the National Airspace System. The Determination of No Hazard to Air Navigation issued on the existing antenna tower, under Aeronautical Study 1996-ASW-2512-OE, stated that the determination applied only to the antenna tower and the use of frequency 102.9 at 44 kW ERP. It stated that use of other frequencies and power at the antenna tower would require separate notice to the FAA. No notice was filed with the FAA and research resulting from the occurrences of electromagnetic interference found the source to be the use of frequency 107.9 at 24.5 kW ERP on the subject antenna tower. This aeronautical study and determination result from those findings. Public notice was not issued because substantial adverse effect on aeronautical procedures, and thus aviation safety, was identified during the initial study process.

As previously indicated, Aeronautical Study 1996-ASW-2512-OE, found that the existing antenna tower, based on its height, location, and use of frequency 102.9 MHz at 44 kW ERP was not a hazard to air navigation. The side mounted antenna, transmitting on frequency 107.9 at 24.5 kW ERP, has no adverse effect on VFR terminal or en route flight and no cumulative effect. However, the frequency and power, at the existing location do have a substantial adverse effect on navigational aids and IFR flight.

Repeated reports of actual radio frequency interference, made by B-52 pilots using the Barksdale Air Force Base ILS Runway 15 and ILS Runway 33 procedures, initiated the current aeronautical study. Intermodulation study found that aircraft operating in the frequency protected service volume, making instrument landing system ILS approaches to Runways 5 and 14 at Shreveport Regional Airport, Runway 14 at Shreveport Downtown Airport, and Runways 15 and 33 at Barksdale Air Force Base, are subject to hazardous three signal/third order intermodulation interference, two signal/third order interference, and adjacent channel overload. This potential interference results by the proposed frequency in combination with existing stations and the study found nine such combinations potentially causing intermodulation interference. These combinations potentially interfere with the Barksdale Air Force Base ILS systems for Runways 15 and 33, the Shreveport Regional Airport ILS system for Runway 14 and localizer for Runway 5, and the Downtown Airport localizer for Runway 14. As a result of potential and actual reports of interference from the subject transmitter, the Barksdale Air Force Base ILS Runway 15 and ILS Runway 33 approach procedures are currently not authorized for use. These procedures are essential to flight safety during conditions of low ceilings and visibility.

The potential and reported interference with navigational aids by the subject transmitter constitutes an adverse effect. The adverse effect currently involves all flights unable to utilize the Barksdale Air Force Base Runway 15 and 33 ILS procedures and potentially effects all flights which would use the instrument

procedures previously indicated at Shreveport Regional Airport and Downtown Airport. Accordingly, this determination finds that the subject antenna, transmitting on frequency 107.9 at 24.5 kW ERP, has a substantial adverse effect and constitutes a hazard to air navigation.

Frequency Data for ASN 2005-ASW-6-02

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
107.9	0	MHz	24.5	KW

CERTIFICATE OF SERVICE

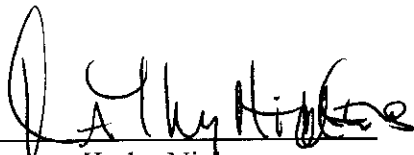
I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that the foregoing "Reply to Opposition" was mailed this 10th day of March, 2005 to the following:

Peter Doyle, Chief*
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*Delivered via facsimile


Kathy Nickens

March 10, 2005